

Applicant: Peter Osypka
Application No.: 10/537,983

REMARKS

Claims 2 - 10 are currently pending in this application, as amended. By the present amendment, claim 1 has been canceled, claims 2-7 have been amended and claims 8 – 10 have been added. No new matter has been introduced into the application by these amendments.

In the Action, claim 4 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In response, claim 4 has been amended to correct the informality noted in the Action in accordance with the amendments suggested by the Examiner. Accordingly, withdrawal of the Section 112 rejection of claim 4 is respectfully requested.

Substantively, claims 1 and 2 were rejected under 35 U.S.C. §102(b) as anticipated by U.S. 5,411,527 to Alt or in the alternative as obvious over Alt. Applicant respectfully traverses this rejection. However, in order to obtain prompt allowance of this application, applicant has canceled claim 1 and amended claims 3 and 4 to place them in independent form with the subject matter of claim 1. Claim 2 has also been amended to depend from claim 4. Accordingly, this rejection in view of Alt has been rendered moot.

Claims 3-7 were also rejected in the Action under 35 U.S.C. §103 as unpatentable over Alt in view of U.S. 6,311,087 to Vane et al. Applicant respectfully traverses this rejection.

Alt is directed to defibrillation electrodes and implantation in which the electrode is inserted into a vein (55) and led into the interior of the heart where it is positioned against the heart wall. The Action is in agreement in citing the teaching of the introducing catheter's lumen having a diameter large enough for the electrode to be introduced through the lumen into the vein. However, it is clear that there is no suggestion or disclosure in Alt of the presently claimed cardiac pacemaker electrode arrangement as now recited in claims 3 and 4. The present arrangement requires the cardiac pacemaker electrode to act on an outside of a heart or on the heart from an outside thereof and is arranged with a pole in the heart tissue in an operational position which extends to an implantable cardiac pacemaker. The arrangement further includes an electrode feed line with an anchor that is fixed from an outside of the heart into the heart tissue in the operational position. Conversely, Alt specifically requires the introduction of the electrode through a vein and hence contacts the heart wall from the inside. Therefore the present arrangement can in no way be suggested regardless of whether Alt is directed to a defibrillation or pacemaker electrode. Additionally, there is no suggestion or disclosure in Alt of an anchor located at the distal end of the electrode which is positioned in the heart wall. Alt is silent with respect to this feature.

Vane et al. does not address this deficiency in Alt with respect to claims 3 and 4. Vane et al. is directed to a cardiac rhythm management system which includes

an implantable device that delivers defibrillation energy to the heart. The Vane et al. device also discloses electrodes that are inserted to the heart via a vein such that the electrode contacts an inner heart wall surface. Accordingly, there can be no suggestion or disclosure in Vane et al. of the present electrode arrangement as recited in claims 3 and 4 in which the electrode is arranged on an outside of the heart or on the heart from the outside thereof with an anchor that is fixed from the outside of the heart into the heart tissue in the operational position. While Vane et al. does disclose the use of a corkscrew or barb for securing an electrode inside the patient's heart, this does not address the arrangement of the present invention.

In order to make an obviousness rejection, generally three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the references' teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all of the claim limitations. In the present case, the combination of Alt and Vane et al. fail to teach or suggest all of the limitations in claims 3 and 4 with respect to the present electrode arrangement as there is no suggestion or disclosure in the cited references of anchoring the cardiac pacemaker electrode with an anchor that is fixed from an outside of the heart in the operational position. Accordingly, withdrawal of the Section 103 rejection of claims 3 and 4 is

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respectfully requested. Claims 2 and 5-7, depend directly from claim 4 and should be patentable for the reasons noted above in connection with claim 4.

Applicant has also added new claims 8-10, which correspond generally to claims 5-7 and which depend from claim 3. These claims are also patentable over the cited art for the reasons noted above in connection with claim 3.

If the Examiner believes that any additional minor formal matters need to be addressed in order to place the present application in condition for allowance, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience in order to address these matters.

In view of the foregoing Amendments and Remarks, Applicant respectfully submits that the present application, including claims 2-10, is in condition for allowance, and a Notice to that effect is respectfully solicited.

Respectfully submitted,

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